

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ETSHO ILUNGA,

Defendant.

*
*
*
*
*
*
*
*
*

CR 111-305

O R D E R

Presently pending before the Court are three motions filed by Defendant: (1) a "motion to file for lawsuit against attorney Harold V. Jones" (doc. no. 44); (2) a motion to vacate¹ (doc. no. 47); and (3) a "motion to transfer to BOP camp as a legal intellectual immigrant" (doc. no. 58). The Court discusses each below.

A. Motion to File for Lawsuit Against Attorney and Motion to Vacate

Defendant pled guilty to one count of bank fraud and one count of aggravated identity theft in violation of federal law on January 13, 2012. (Doc. no. 28.) On March 23, 2012, Defendant was sentenced to a term of 45 months imprisonment. (Doc. no. 31.) Defendant filed his notice of appeal on October 31, 2013. (Doc. no. 40.) Four months later on February 19, 2014, Defendant filed his motion to file for lawsuit against his

¹ Although this filing was docketed as a "motion to vacate," the Court, upon further review, determines it is more properly characterized as a letter filed in response to its March 28, 2014 Order.

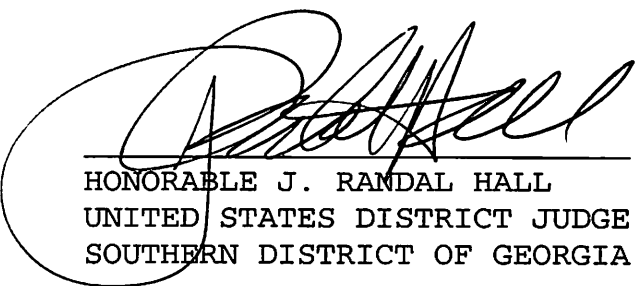
attorney. (Doc. no. 44.) On March 28, 2014, the Court entered an Order notifying Defendant that it intended to recharacterize the motion as one under 28 U.S.C. § 2255. (Doc. no. 46.) In that Order the Court provided the necessary warnings under Castro v. United States, 540 U.S. 375 (2003), and directed Defendant to notify the Court whether he contested the recharacterization. (Id. at 1-2.) Defendant responded with a letter filed on April 14, 2014, in which he declared that he had "no intention to file for 2255." (Doc. no. 47 at 2.) Despite his refusal to have his previous motion recast under § 2255, he proceeded to attack the validity of his sentence and reassert his ineffective assistance of counsel claim. (Id. at 1-2.)

Subsequently, Defendant filed a motion to vacate under § 2255 on June 9, 2014, in which he asserted claims for relief prayed for in both his motion to file for lawsuit against his attorney and his letter in response to the Court's March 28, 2014 Order. (Doc. no. 49.) On June 13, 2014, the Magistrate Judge entered his Report and Recommendations, which this Court adopted over the Defendant's objections on July 8, 2014. (Doc. nos. 51, 53, 56.) Because the Defendant's § 2255 motion raised the same grounds for relief requested in his motion to file for lawsuit against his attorney and his letter in response to the Court's March 28, 2014 Order, these motions (doc. nos. 44, 47) are **DENIED AS MOOT.**

B. Motion to Transfer

Defendant also requests that the Court recommend to the BOP that he be transferred "to the BOP camp and halfway house" for the remainder of his sentence. (Doc. no. 58 at 2.) However, at this time, the Court does not find it appropriate to deviate from the sentence imposed. Consequently, Defendant's motion (doc. no. 58) is **DENIED**.

ORDER ENTERED at Augusta, Georgia, this 5th day of September, 2014.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA